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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,021	02/18/2004	James D. Ralph	F-200 CON I	2824
51640	7590	08/22/2005	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			PELLEGRINO, BRIAN E	
			ART UNIT	PAPER NUMBER

3738

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,021

Applicant(s)

RALPH ET AL.

Examiner

Brian E Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,4,7,8,10,11 are rejected under 35 U.S.C. 102(b) as being anticipated by Harrington (5893889). Fig. 2 shows an artificial intervertebral spacer device with a first plate member **32** and a second plate member **34**. It can also be seen that the second plate surfaces (**36**, **40** respectively) face away from one another. Additionally, it can be seen that the second plate has a convex element **54** mounted thereon with a curvate volume **50** coupled together with the first member by retaining wall **78** and retaining ring **74**. It can additionally be seen the retaining ring extends from an annular groove **70** in the retaining wall. With respect to claim 4, it can also be seen that the second plate member comprises a post structure **45** with a ball **46** extending from the second plate. It can be construed that the retaining wall is indirectly in contact with the first plate member and extends outward from the plate. It is also noted that the wall and rings limit the movement of the convex element once the entire device is assembled. The convex element is movable relative to the first plate when assembling the components to form the implant.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3,5,6,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrington '889 in view of Ralph et al. (5989291). Harrington is explained supra. However, Harrington fails to disclose the convex element is a Belleville washer or the post includes a threaded bore to receive a set screw or that the first plate has an outer perimeter where its diameter is larger than the retaining wall diameter. Ralph et al. teach (Fig. 9) an intervertebral spacer device having a Belleville washer **230** between two plates with a post and ball coupled to the washer and also secured with a setscrew **205**. Ralph also teaches that the Belleville washer is one of the strongest configurations for a spring, col. 3, lines 58-62. Ralph additionally teaches the setscrew locks the post in place, col. 4, lines 44-46. It would have been obvious to one of ordinary skill in the art to substitute a Belleville washer for the convex element and also incorporate a set screw as taught by Ralph et al. with the spacer device of Harrington such that it provides a stronger force restoring subassembly than a shock absorber. It would have been an obvious matter of design choice to modify the dimensions of the diameters of the plate members and the retaining wall, since applicant has not disclosed that using a plate member with a larger diameter than the retaining wall provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the dimensions of the device taught by Harrington or the claimed larger diameter

plate in claim(s) 9 because both spinal implants perform the same function of providing a pivot moving spinal spacer.

Allowable Subject Matter

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 6/10/05 have been fully considered but they are not persuasive. In response to Applicant's argument that Harrington's device includes additional structure (threads) not required by Applicant's invention, it must be noted that Harrington discloses the invention as claimed, two plate members with a convex element there between and a retaining wall and retaining rings. The fact that it discloses additional structure not claimed is irrelevant to the issue of patentability.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3738

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

